municipal court for keeping intoxicating liquors for sale that there has been a prior prosecution and acquittal upon a charge of violating the penal laws of the State based on the same transaction. *Sutton* v. *Mayor, etc., of City of Washington*, 4 Ga. App. 30, 60 S. E. 811 (1908).

With regard to the last point the situation in Virginia has been materially changed by a statute providing that the mayor of a city is to have concurrent original jurisdiction with the circuit court to try a defendant for the unlawful transportation of intoxicating liquors. Hence, a prosecution thereunder in a mayor's court bars a prosecution for the same offense in the circuit court. *Bryan* v. *Commonwealth*, 126 Va. 749, 101 S. E. 16 (1919).

EQUITY—JURISDICTION—OBJECTION TO JURISDICTION BECAUSE OF ADEQUATE REMEDY AT LAW MAY BE WAIVED.—In a suit in equity for cancellation of a surety bond on the ground that it was obtained by fraud, the defendant objected to the jurisdiction in equity on the ground that the plaintiff had an adequate remedy at law. The defendant also pleaded a counterclaim asking recovery on the bond, and did not renew motion for dismissal on the ground that equity had no jurisdiction until the court indicated its determination to decide in favor of the plaintiff. *Held*, the defendant waived the objection to equity jurisdiction. *American Surety Co. of New York* v. *American Mills Co.*, 273 Fed. 67 (1921).

A bill in equity does not lie in any case where a plain, adequate and complete remedy may be had at law. *Singer Sewing Machine Co.* v. *Benedict*, 229 U. S. 481 (1913). But the objection to jurisdiction in equity may in certain cases be waived. *McGowan* v. *Parish*, 237 U. S. 285, (1914). A distinction must be made between cases where there is an entire lack of matter of equitable cognizance, and cases within the field of equitable jurisdiction but in which an element essential to the plaintiff's right to call upon the court for relief is lacking. Where the subject-matter of the bill is one of which a court of equity cannot properly have jurisdiction under any circumstances, it is well settled that the objection is not waived by failure to interpose it at any particular time, but is available at any stage of the proceedings. *Williams* v. *Fowler*, 201 Pa. 336, 50 Atl. 969 (1902); *Pittsburg, etc., R. Co.* v. *Stowe Tp.*, 252 Pa. 149, 97 Atl. 197 (1916). Where a bill in equity does not state a case proper for relief in that forum the court should dismiss it upon the hearing, whether there be any appearance by the defendant or not. *Graveley* v. *Graveley*, 84 Va. 145, 4 S. E. 218 (1887). Indeed, the court will take notice of the lack of equity jurisdiction *sua sponte*, although no objection has been raised by the parties. *Parker* v. *Winnipiseogee Co.*, 2 Black (U. S.) 545 (1862); *Lewis* v. *Cocks*, 23 Wall. (U. S.) 466 (1874).

If, however, the subject-matter of the bill is one of which courts of equity have concurrent jurisdiction with courts of law, the great weight of authority holds that the objection that equity has not jurisdiction, if not seasonably made, is waived. *Granite Brick Co.* v. *Titus*, 226 Fed. 557, 141 C. C. A. 313 (1915); *Johnson* v. *Huber*, 106 Wis. 282, 82 N. W. 137 (1900). In such case the objection must be taken at the earliest

opportunity in order to entitle the party to insist on it. *Pittsburg, etc., R. Co. v. Stowe Tp., supra; Miller* v. *Rowan*, 251 Ill. 344, 96 N. E. 285 (1911). Generally the objection comes too late when made for the first time at the hearing. *Sears* v. *Scranton Trust Co.*, 228 Pa. 126, 77 Atl. 423, 20 Ann. Cas. 1145 (1910). The objection must be insisted upon in the court below, and cannot be made for the first time on appeal. *Louisville, etc., R. Co.* v. *F. W. Cook Brewing Co.*, 223 U. S. 70 (1911). A defendant who seeks affirmative equitable relief by filing a cross-bill alleging new facts is precluded from subsequently objecting to equity jurisdiction. *Original Consol. Mining Co.* v. *Abbott*, 167 Fed. 681 (1908).

The instant case is one in which the subject-matter is subject to the concurrent jurisdiction of law and equity, and one in which the defendant sought affirmative relief in equity; hence, the court rightly held the objection to equity jurisdiction waived. Such holding is eminently reasonable, for the objection ought to be taken in the earliest stages of the suit, before costs have accumulated, or by lapse of time irreparable injury may result, by remitting the complainant to a legal remedy which has in fact become unavailing. See *Tubb* v. *Fort*, 58 Ala. 277.

On the other hand, those cases holding that where the cause is wholly without the field of equitable cognizance, the objection to equity jurisdiction cannot be waived, are certainly sound. Consent may waive errors, but it can never confer jurisdiction. The jurisdiction of a court is defined by the law which created the court, and no consent of parties can add to or take from it.

MUNICIPAL CORPORATIONS—OBSTRUCTION OF SIDEWALK WITH BUILDING MATERIALS FOR PRIVATE CONSTRUCTION—LIABILITY OF CITY FOR INJURY OF PEDESTRIAN.—The defendant city permitted an owner of premises abutting one of its sidewalks to completely obstruct, with building material, the sidewalk and about one-half of the street. The traffic on this part of the street was heavy and the defendants knew that it was customary to run automobiles along this street at a very high rate of speed. The plaintiff was lawfully walking along this street and finding the sidewalk obstructed, was compelled to go out into the street to pass around the obstruction. While thus in the street, the plaintiff was struck and injured by an automobile. The plaintiff brought an action for damages against the city. *Held*, the plaintiff could recover. *Shafir* v. *Sieben* (Mo.), 233 S. W. 419 (1921).

A municipal corporation is not liable for damages resulting from the exercise, or non-exercise, of its governmental functions. *Jones* v. *City of Williamsburg*, 97 Va. 722, 34 S. E. 883, 47 L. R. A. 294 (1900). For liability of a municipal corporation for the acts of its agents in the exercise of a governmental function see 7 VA. LAW REV. 383, and authorities there cited; see also Article, 1 VA. LAW REV. 497. For authorities distinguishing between the liability of a city for the physical condition of its streets and the use to be made of its streets see 4 VA. LAW REV. 592. Also see 4 VA. LAW REV. 414. And for the liability of a municipal corporation in general see Note, 20 L. R. A. (N. S.) 512, *et seq.*

Coming to the strict rule of implied liability for the unsafe or defec-